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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LINDA MARSHALL, BEN DAMPIOS, AL	:	
SPILOWAY, BERNIE APOTHEKER, HARRY	:	Civ. No. 07-CV-6950 (LAP)
ESPOSITO and BRENT WENTZ, on behalf of	:	
themselves and all others similarly situated,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
MILBERG WEISS BERSHAD & SCHULMAN	:	RESPONSE OF THE
LLP, LERACH COUGHLIN STOIA GELLER	:	COUGHLIN FIRM TO
RUDMAN & ROBBINS LLP, MELVYN I.	:	THE UNITED STATES'
WEISS, DAVID J. BERSHAD, and STEVEN G.	:	MOTION FOR A STAY
SCHULMAN, DOES 1 THROUGH 15,	:	
	:	
Defendants.	:	
-----X	:	

Defendant Lerach Coughlin Stoia Geller Rudman & Robbins LLP (the "Coughlin Firm") hereby responds to the Motion of the United States, dated February 28, 2008, to intervene in this action and stay discovery (the "Motion to Stay").

As allowed by the Stipulation that was So Ordered by this Court on October 30, 2007, the Coughlin Firm on October 30, 2007 filed a motion to dismiss this action as

against the Coughlin Firm only, on grounds unique to the Coughlin Firm. Plaintiffs responded to that motion, briefing was completed and the motion remains *sub judice*. In the Motion to Stay, the United States seeks a further stay of discovery in this action, but expressly does not seek a stay of consideration of the Coughlin Firm's motion to dismiss. Rather, the United States expressly exempts the Coughlin Firm's motion to dismiss from the Motion to Stay. *See* Memorandum of Law in support of the Motion to Dismiss at p. 19.

Plaintiffs' Memorandum of Law In Partial Opposition to the Government's Motion to Intervene and Stay All Proceedings, dated March 7, 2008 (the "Plaintiffs' Memorandum") requires some additional comment. Plaintiffs propose that they be given leave to amend their complaint and that defendants be required to answer this amended complaint before the expiration of the stay.¹ Plaintiffs also propose that they be allowed to serve discovery requests to which defendants would be required to respond five days after expiration of the stay. Plaintiffs also suggest that 12(b)(6) motion practice would take place after the expiration of the stay, though how this could possibly comport with requiring defendants to answer the amended complaint prior to the expiration of the stay is not explained, and would present a very strange structure completely at odds with the Federal Rules' option to present a motion to dismiss in lieu of answer.

Moreover, from the Coughlin Firm's perspective, plaintiffs' suggestion would be highly prejudicial. The Coughlin Firm has already submitted a motion to dismiss the complaint, asking that the complaint be dismissed with prejudice and without leave to replead. That motion has been fully briefed and remains *sub judice*. Plaintiffs agreed in

¹ It is not clear whether plaintiffs intend Plaintiffs' Memorandum to serve as their application for leave to file an amended complaint, and if so this would seem deficient on its face given the lack of any proposed amended complaint accompanying the application.

the stipulation So Ordered October 30, 2007 that the Coughlin Firm's motion to dismiss the complaint would be considered on its own merits despite any stay in these proceedings. In the face of this agreement, plaintiffs cannot now ask that they be given leave to file yet another complaint even before consideration of the motion to dismiss the last one.

If plaintiffs' concern is that the statute of limitations may run as to certain additional defendants they wish to sue, the solution is obvious, and will not interfere with this case. Plaintiffs may sue any additional defendants separately, designate the action as a related action to this one, and the actions may be consolidated after the stay is lifted.

With the above caveats that the suggestion of Plaintiffs' Memorandum that plaintiffs be given leave to file an amended complaint is highly objectionable, and with the understanding that the Motion to Stay as requested by the United States does not seek to stay further consideration of the Coughlin Firm's motion to dismiss, the Coughlin Firm takes no further position on this Court's consideration of the merits of the Motion to Stay.

Dated: New York, New York
March 13, 2008

EISEMAN LEVINE LEHRHAUPT
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By: /s/
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